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December 6, 2022

**VIA ELECTRONIC FILING**

The Honorable Maryellen Noreika  
U.S. District Court for the District of Delaware  
J. Caleb Boggs Federal Building  
844 North King Street  
Wilmington, DE 19801

Re: *ecobee, Inc. v. EcoFactor, Inc.*, C.A. No. 21-323-MN

Dear Judge Noreika:

I write on behalf of the parties to update Your Honor regarding issues raised in the Court's December 2, 2022 Order and in the parties' December 4, 2022 letter submission. Specifically, the parties have continued their meet and confer efforts, including three additional meet and confer sessions by lead counsel. Despite these efforts, the parties could not reach any compromise on the four terms for which indefiniteness is being argued due to the dispositive nature of those invalidity arguments. However, the parties agree that they can rest on the papers regarding one of those terms, "said thermostatic control device." The remaining two claim terms are related (i.e., whether certain preambles are limiting and, if so, how the term "operational efficiency" within those preambles should be construed). The parties have discussed potential compromises regarding these two related terms but have been unable to agree upon any compromise. Therefore, we seek your honor's guidance as to this claim term. Thank you for your consideration.

Respectfully,

/s/ *David E. Moore*

David E. Moore

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cc: Clerk of Court (via hand delivery)  
Counsel of Record (via electronic mail)